

RAID

Rights & Accountability in Development

5 October 2005

Response to Anvil Mining's 'Report on the Visit by NGOs to the Dikulushi Mine, DRC'

1. RAID is releasing this brief account of its visit to the Dikulushi Mine and Kilwa in the Democratic Republic of Congo (DRC) in response to the report which Anvil Mining has circulated widely concerning the visit by NGOs to the Dikulushi Mine in the Democratic Republic of the Congo (dated 30 August 2005).
2. On 14 October 2004, there was a small-scale uprising in the town of Kilwa, near Anvil's Dikulushi mine. Kilwa is crucial to Anvil's copper and silver mining operation, as it is a port on Lake Mweru from which the ore is shipped across to Zambia on onward for processing. Anvil has stated to the UN that its vehicles were used to bring in Congolese Armed Forces (Forces Armées de la République Démocratique du Congo - FARDC) from the town of Pweto and that it made available space on the planes it leases to fly in reinforcements from Lubumbashi, the capital of Katanga. During the military operation to suppress the minor insurrection Anvil vehicles, some driven by Anvil employees, were used by soldiers. In the military offensive about 100 people – the majority of them innocent civilians - were killed, some of them were allegedly summarily executed.¹
3. RAID believes that there are two key issues: i) whether Anvil's assistance was given willingly or unwillingly; and ii) whether Anvil fully and promptly disclosed what it knew about alleged human rights and security problems at Dikulushi in its reports to the Canadian and Australian stock exchanges and to the World Bank's Multilateral Investment Guarantee Agency (MIGA).
4. In October 2004, the commander of the 6th military region at Lubumbashi informed MONUC that *'the FARDC's intervention to restore security at Kilwa was made possible thanks to the logistical support provided by Anvil Mining'*.²
5. Anvil Mining has offered its collaboration to the UN to shed light on its alleged involvement in these events. *'It informed MONUC that the logistics, the air transport and the drivers had been provided to the army following requests from the high commander of the 6th military region, from Colonel Ademars at Pweto and from the Governor of Katanga, request "which could not be refused". Anvil Mining has notably referred to a previous incident in March 2004 during which FARDC soldiers allegedly took Anvil vehicles at gunpoint and struck an Anvil member of staff. According to Anvil Mining, on 16 October 2004 the company had protested to Colonel Ademars and the Administrator of the Territory of Kilwa about these alleged requisitions.'*³
6. As far as RAID is aware, before 6 June 2005 (when Australian television screened a documentary by 'Four Corners' into the Kilwa incident), no one at Anvil made any reference to Anvil's vehicles and planes having been requisitioned. Nor did Anvil's formal report to the Australian Stock Exchange dated 28 April 2004, regarding the March 2004 incident, refer to the fact that its vehicles had been commandeered at gun point.

¹ MONUC, 'Rapport sur les conclusions de l'Enquête Spéciale sur les allégations d'exécutions sommaires et autres violations de droits de l'homme commises par les FARDC à Kilwa (Province de Katanga) le 15 octobre 2004' Kinshasa undated but released to RAID on 23 September 2005. Hereafter MONUC report.

² Monuc report, paragraph 37

³ Monuc report, paragraph 39

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7. RAID had two objectives for asking Anvil to agree to a visit by its Executive Director to Dikulushi and Kilwa: first, to ascertain as far as possible the security situation of witnesses to the incident; and secondly, to meet Anvil's management and to give them an opportunity of responding in person to the allegations that had been made about the role of the company in the Kilwa incident of October 2004.
8. Before the visit, RAID had received disturbing reports that witnesses had been threatened and intimidated allegedly by persons linked to the military or security services. The troops accused of carrying out human abuses in October 2004 remained in Kilwa until July 2005. Their commander, Colonel Ademar Ilunga, was detained in June 2005.
9. RAID was also concerned that the Congolese human rights NGOs who had investigated the Kilwa incident, ASADHO-Katanga and ACIDH, were the subjects of a public campaign of intimidation and harassment.
10. RAID made clear to Anvil that that it would be prepared to review its public statements concerning Anvil's role in the light of any new information from the company. A full report is in preparation. RAID's interest in the Kilwa incident is in highlighting the importance of respect for human rights by multinationals operating in developing countries and in ensuring that effective accountability mechanisms are in place.
11. Anvil Mining set out the terms for the visit which RAID agreed to abide by.

In terms of discussions relating to the October 2004 Kilwa Incident; while in the DRC, you will have access to me, Mike O'Sullivan and Pieter van Niekirk (Security Manager). You will appreciate that given the foreshadowed legal action by Sydney law firm Slater & Gordon, you will not have access to other Anvil employees for the purposes of discussing the Kilwa Incident, and your acceptance of this is a pre-requisite for your visit going ahead. Apart from anything else, we have an obligation to protect all our employees from this potential litigation.⁴

12. Anvil organized a programme for RAID's Executive Director which included visits to the villages closest to the mine: Dikulushi, Kiaka, and Shula. RAID met local chiefs and visited the town of Kilwa, the scene of many of the human rights abuses of October 2004. Anvil provided transport and Anvil staff acted as interpreters (the population is predominantly Bemba speaking) and accompanied the group to all the meetings.
13. RAID, was not given any prior notification that Anvil had decided to invite Mr Issac Kekana, the Consul General of the Republic of South Africa in Lubumbashi, and representatives of three Lubumbashi – based NGOs: ASADHO/Katanga, LICOF, RELCOF, and AAM. Of all the Congolese NGOs invited, only ASADHO had a manifest interest in the Kilwa incident - in January 2005 it had published the results of its investigation into alleged human rights violations by the FARDC.⁵ As far as RAID is aware, until the August visit, none of the other NGOs selected by Anvil had made any public pronouncement about the Kilwa incident.

⁴ Email from Bill Turner, 10 August 2005

⁵ ACIDH, another Lubumbashi based NGO, which on 28 February 2005 had written to Anvil about its alleged logistical support to the Congolese military, was not invited.

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14. Anvil has not provided RAID with a clear explanation of the criteria it used to select participants for its 'tour'. Although RELCOF and AAM, are listed in Anvil's report as separate organizations their personnel seem to be interchangeable.⁶ They have both issued communiqués criticizing Congolese human rights NGOs for calling for a full investigation into the circumstances in which Anvil's transport came to be used by the FARDC.⁷ In a communiqué issued on 12 July, AAM accused RAID and other international NGOs of having 'a grudge against Congolese companies' including Anvil Mining and others owned by the Forrest Group.⁸ An allegation RAID totally rejects.
15. Although some documents were made available during RAID's visit Anvil has not provided its 'recently completed internal investigation carried out by Queen's Counsel Wayne Martin and Clayton Utz', which concluded that the allegations relating to Anvil were unfounded.⁹
16. During the visit it was clear that local people were still deeply scarred by the events of October 2004. In many of the villages visited chiefs and local people expressed indignation about victims who had been summarily executed, arbitrarily detained or tortured by the soldiers. At the village of Nsensele the bodies of many of the victims are buried in pits. These had apparently been excavated previously and used by Anvil to obtain laterite to maintain the Dikulushi-Kilwa road. Local people expressed their profound unhappiness that, because of an order by the military authorities issued on 15 October 2004 banning wakes and funerals, the families had been prevented from giving the victims a decent burial. The Consul General of the Republic of South Africa was deeply troubled by the fact that the victims were still buried in improvised mass graves. In Kilwa, many sources informed RAID that immediately after the incident, when Colonel Ademar Ilunga was still in control of the area, anyone seen to be weeping or in distress about the killings was threatened by the military.
17. After the visit important questions that RAID believe it would be in Anvil Mining's interest to see publicly clarified remain unresolved.
 - The precise circumstances in which Anvil's vehicles and the Anvil leased planes were put at the disposal of the Congolese army.
 - Whether there was any omission on Anvil's part to disclose relevant information about the Kilwa incident to the World Bank/MIGA.
 - Whether MIGA/World Bank Group had appropriate systems in place to appraise a project in a conflict zone.
18. Anvil has stated publicly that it has completed its own internal investigation into the Kilwa incident and has referred to the conclusions of the investigation which Anvil states has cleared it of any wrongdoing. The Anvil inquiry team apparently worked for two and a half months visiting Dikulushi and taking affidavits and has prepared a lengthy dossier which so far the company has refused to disclose. In the interests of bringing closure to the tragic events in Kilwa and in order to assist the

⁶ CAIMAN Kaymebe Ngwama, who is presented in Anvil's report as 'President of AAM (Association and the Alienation and Handling of the Consciences)', handed out business cards which identified him as RELCOF's President.

⁷ RELCOF Complément Rapport No 9 'Sur le massacre de Kilwa (territoire de Pweto, district du Haut Katanga, province de Katanga) République Démocratique du Congo en octobre 2004, Septembre 2005

⁸ AAM 'Appel Patriotique No 003/05 'Des ONG étrangères (européennes) en veulent à la RDC et aux sociétés congolaises.'

⁹ Anvil Mining Limited 'Anvil Confirms that Allegations are Unfounded' press release 23 August 2005

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ongoing investigations by the Australian Federal Police and the Congolese military authorities, RAID is calling on Anvil:

- To release the results of its own internal inquiry.
 - To encourage and assist its staff, past and present, who may have witnessed human rights violations, to come forward and provide their individual testimonies to the UN, the Lubumbashi Military Prosecutor and the Australian Federal Police.
19. The internal audit which has been carried out by the World Bank's Compliance Advisor/Ombudsman (CAO) should establish whether MIGA's due diligence around this project was adequate given the sensitivities of supporting a mining project in a post-conflict country. RAID hopes that the CAO report (which is due to be released imminently) will also assess the extent to which the warranties given by Anvil to MIGA were observed.
20. Finally, RAID hopes that lessons can be drawn from the Kilwa incident for the future to strengthen the human rights guidance given by the World Bank Group to companies in the extractive industries that are recipients of IFC support or MIGA insurance, particularly those operating in conflict zones.